IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 13590 of 2004

Between:

Smt. Atmakuri Krishna , W/o Hanumaiah,
Tanguturu Mandal, Prakasam District.

..... PETITIONER

AND

1 The District Collector (Pt. Wing),
Prakasam District, Ongole.
2 The District Panchayat Officer,
Prakasam District, Ongole.
3 The Assistant Treasury Officer,
O/o Divisional Treasury Office, Ongole.
4 The Extention Officer (PR & RD),
Tanguturu, Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more in the nature of Writ of Certiorari calling for the records relating to and in connection with the impugned proceedings and to declare the action of the 1st respondent in issuing the impugned proceedings Roc.No. 698/2004 (Pts.) A1, dated 17-7-2004 confirming the orders of the 2nd respondent in Roc.No. 698/2004 (P) A1, dated 7-6-2004 as illegal, arbitrary and violative of Art. 14 of the Constitution of India and consequentially to direct the respondents to permit the petitioner to discharge his legitimate duties including drawal of all funds as Sarpanch of Karumanchi Gram Panchayat, Tanguturu mandal, Prakasam District.

Counsel for the Petitioner :MR. M.SUDHIR KUMAR

Counsel for the Respondents : GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT

The Court made the following :

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13590 OF 2004

ORDER:

The petitioner was elected as Sarpanch of the Karumanchi Gram Panchayat, Tangutur Mandal of Prakasam District in the month of August, 2001. It appears that one Sri Y.China Pitchaiah, who was working as Junior Assistant in the office of the Karumanchi Gram Panchayat office, and retired from service during the year 1999, filed C.D.No.42 of 2004 in the District Consumer Forum, Ongole, for recovery of certain amounts alleged to be due from the Gram Panchayat towards the encashment of Earned Leave. Being the Sarpanch of the Gram Panchayat, the petitioner was served with a notice in the C.D.No.42 of 2004 calling upon to explain the claim of the petitioner therein. The petitioner engaged an advocate and the matter is still pending. While so, by notice dated 22-04-2004 issued by the 2nd respondent - District Panchayat Officer, Prakasam District, Ongole, the petitioner was directed to pay a sum of Rs.46,231/- to the said Y.China Pitchaih within three days and to report compliance, failing which appropriate action, on the basis of the record, will be taken. Immediately, the petitioner submitted a representation dated 01-05-2004 stating that only a sum of Rs.3,571/- is available in the Gram Panchayat account and since there are no sufficient funds, the Gram Panchayat is unable to comply with the instructions in the notice dated 22-04-2004. It was also stated that the instructions will be complied with immediately on the availability of funds or otherwise the necessary grant may be released to the Gram Panchayat, so as to make the payment to Sri Y.China Pitchaiah. Subsequently, the second respondent-District Panchayat Officer, by letter dated 31-05-2004, instructed the third

respondent-Assistant Treasury Officer, Ongole, not to honour any cheque issued for withdrawals from the general funds of the Gram Panchayat except the cheque issued for a sum of Rs.46,231 in favour of Sri Y.China Pitchaiah. A copy of the said letter has also been marked to the petitioner as well as to the Panchayat Secretary of the Karumanchi Gram Panchayat. However, surprisingly, the second respondent-District Panchayat Officer, issued further proceedings dated 07-06-2004 alleging that the petitioner has violated the orders of the District Forum in C.D.No.42 of 2004 and failed to pay the amounts to Sri Y.China Pitchaiah and accordingly preventing him from drawing the funds of the Gram Panchayat. That apart, while empowering the Extension Officer (PR & RD), Tangutur, to draw the funds, the Assistant Treasury Officer, Ongole, was requested not to honour the cheques signed by the petitioner and to honour the cheques signed by the Extension Officer (PR & RD) alone until further orders. There was also a direction to the Extension Officer (PR & RD), Tangutur, to pay a sum of Rs.46,231/- to Sri Y.China Pitchaiah, by drawing the said amounts from the Gram Panchayat funds. Aggrieved by the said proceedings, the petitioner filed W.P.No.9809 of 2004, however, the same was dismissed by this Court granting liberty to the petitioner to workout the alternative remedy of appeal and staying the operation of the proceedings, dated 07-06-2004 for a period of two weeks. Accordingly, the petitioner filed an appeal before the first respondent. The said appeal was dismissed by the first respondent by proceedings dated 17-07-2004 which is under challenge in this writ petition.

I have heard the learned Counsel for the petitioner and the learned Government Pleader appearing for the respondents and perused the material on record.

The learned Counsel for the petitioner vehemently contends that the allegation that the petitioner has violated the order in C.D.No.42 of 2004 is absolutely incorrect, since the District Forum has not passed any order in C.D.No.42 of 2004 and as a matter of fact, the matter is still pending and coming up for counter of the respondents. The learned Counsel also submits that since admittedly there are no sufficient funds in the account of the Gram Panchayat, there is no reason to find fault with the petitioner for the non-payment of the amounts in question to Sri Y.China Pitchaiah, and at any rate the claim of the said Y.China Pitchaiah relates to the period prior to the election of the petitioner as Sarpanch of the Gram Panchayat

and therefore the petitioner is not at all concerned with the alleged dues to the retired employee. It is also contended that the first respondent while disposing of the statutory appeal failed to take into consideration of any one of the above said facts, and mechanically confirmed the order dated 07-06-2004 without assigning any reasons.

A counter-affidavit has been filed by the District Panchayat Officer, Ongole, however, except narrating the facts, no case is made out to show that the petitioner is responsible for non- payment of the amounts to the retired employee. Particularly, nothing has been placed before this Court to show that there is any order by the District Consumer Forum directing payment of amounts to the complainant in C.D.No.42 of 2004. Moreover, the fact that in spite of the directions issued to the Extension Officer, the amounts in question have not been paid to the retired employee till date, has also not been disputed by the respondents.

In the light of the facts narrated above, and having regard to the contentions raised by the learned counsel for the parties, I am of the view that the second respondent is not justified in passing the order dated 07-06-2004 withdrawing the cheque drawing power of the petitioner. Firstly, it has to be noted that on the basis of the material on record, absolutely no case is made out to show that there was any order as such passed by the District Consumer Forum for payment of the amount to the retired employee Y.China Pitchaiah. The respondent also failed to make out any case so as to fix the responsibility on the petitioner for the alleged lapses in making the payments to the retired employee. At any rate, since admittedly, the order dated 07-06-2004 was passed without affording any opportunity to the petitioner to rebut the allegation that he has violated the order of the District Consumer Forum, undoubtedly, the said order is in violation of the fundamental principles of natural justice, and on that ground alone the order is liable to be set aside. As rightly contended by the learned Counsel for the petitioner, the appellate authority of the first respondent failed to consider any one of the contentions raised by the petitioner and mechanically dismissed the Appeal. The impugned orders passed by both the respondents 1 and 2 apparently are vitiated by non-application of mind to the facts of the case.

In the circumstances, the order of the second respondent dated 07-06-2004 as well as the order of the first respondent dated 17-07-2004, being arbitrary, illegal and in violation of the principles of natural justice cannot be sustained and accordingly, the same are set aside.

Accordingly, the Writ Petition is disposed of. No costs.

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14th December, 2004

gbs

To

1 The District Collector (Pt. Wing),
Prakasam District, Ongole.
2 The District Panchayat Officer,
Prakasam District, Ongole.
3 The Assistant Treasury Officer,
O/o Divisional Treasury Office, Ongole.
4 The Extention Officer (PR & RD),
Tanguturu, Prakasam District.

5.2CCs to G.P. for Panchayat Raj & Rural Development, High Court of A.P. Bldgs, Hyderabad (OUT).

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